

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CHRIS STREETER,
Plaintiff,

v.

Case No. 07-C-299

CANADIAN PACIFIC RAILROAD,
SOO LINE RAILROAD and
CP RAIL SYSTEMS,
Defendants.

DECISION AND ORDER

On April 28, 2009, plaintiff filed a motion to disclose an additional expert witness, Malcolm Cohen, outside of the deadline set by the scheduling order. Plaintiff states that Cohen is an economist who will reduce plaintiff's loss of future earning capacity claim to present value. Defendants oppose the motion, but not on grounds of inconvenience or prejudice; rather, defendants contend that Cohen's testimony is not relevant because plaintiff has no viable claim for loss of future earning capacity to begin with. However, whether the jury will be instructed on loss of future earning capacity depends on the evidence produced at trial. Having reviewed the report of Dr. Dennis J. Gates, M.D., I cannot at this stage say that plaintiff will be foreclosed from arguing that he has suffered a loss of future earning capacity.

Because defendants will not be prejudiced by the late disclosure of Malcolm Cohen, plaintiff's motion to disclose him is **GRANTED**.

Dated at Milwaukee, Wisconsin, this 1 day of June, 2009.

/s _____
LYNN ADELMAN
District Judge